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SENATE

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PUEBLO OF ISLETA SETTLEMENT AND NATURAL RESOURCES RESTORATION ACT OF 2006

SEPTEMBER 29, 2006.—Ordered to be printed

Mr. MCCAIN, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 3648]

The Committee on Indian Affairs, to which was referred the bill S. 3648 to compromise and settle all claims in the case of Pueblo of Isleta v. United States, to restore, improve, and develop the valuable on-reservation land and natural resources of the Pueblo, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

S. 3648 will settle all claims that were raised or could have been raised by the Pueblo of Isleta against the United States under the Isleta Jurisdictional Act of 1996, and additionally will improve the drainage of the irrigated land, the health of the forest land, and other natural resources of the Pueblo.

BACKGROUND

The Pueblo of Isleta (the “Pueblo”) filed suit against the United States under the Isleta Jurisdictional Act of 1996, P.L. 104–198, which conferred jurisdiction on the United States Court of Federal Claims with respect to land claims of the Pueblo, alleging loss and injury to the Pueblo’s lands and property interests because of mismanagement by the Federal government. The parties to the suit have spent several years reviewing and discussing these allegations, and this year the Pueblo, the U.S. Department of Justice, and the U.S. Department of the Interior have come to an agreement resolving those claims. S. 3648 codifies that agreement.

Under the terms of the settlement agreement, the parties have agreed on how to use the settlement funds paid to the Pueblo. Some of the funds will be used for drainage and remediation of the Pueblo's agricultural lands that have been waterlogged. Some of the funds will be spent to rehabilitate and remediate the Pueblo's forest lands. Other funds will be used for acquisition, restoration, improvement, development, and protection of land, natural resources and cultural resources of the Pueblo and for the payment and reimbursement of expenses incurred in connection with this lawsuit.

The bill provides that compensation for the claim will come from the United States Judgment Fund, 31 U.S.C. 1304, and directs the Pueblo and the United States to execute and file a joint stipulation for entry of final judgment in dismissal of the case. Additional funding for restoration activities is authorized for appropriation to the Department of the Interior.

LEGISLATIVE HISTORY

S. 3648 was introduced on July 12, 2006, by Senators Domenici and Bingaman, and was referred to the Committee on Indian Affairs. On September 14, 2006, S. 3648 was unanimously passed out of the Committee and ordered reported without amendment.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On September 14, 2006, the Committee, in an open business session, considered S. 3648. By a voice vote, the Committee ordered the bill reported favorably to the full Senate with the recommendation that the bill do pass.

SECTION BY SECTION ANALYSIS OF S. 3648

Section 1. Short title

Section 1 sets forth the short title, Pueblo of Isleta Settlement and Natural Resources Restoration Act of 2006.

Section 2. Findings and purposes

Section 2 provides findings supporting the intent of the bill, including: The Pueblo and the United States have negotiated a settlement agreement, the validity and effectiveness of which is contingent on the enactment of enabling legislation; the settlement agreement shall restore, improve, and develop the valuable on-reservation land and natural resources of the Pueblo; and settle all claims that were raised or could be raised by the Pueblo against the United States under the Isleta Jurisdictional Act.

Section 3. Definitions

Section 3 sets forth the defined terms used in the bill including: the term "Settlement Agreement" is defined as the Agreement of Compromise and Settlement entered into between the United States and the Pueblo dated July 12, 2005, as modified by the Extension and Modification Agreement executed by the United States and the Pueblo on June 22, 2006, and the term "Isleta Jurisdictional Act" is defined as Public Law 104-198 (110 Stat. 2418).

Section 4. Pueblo of Isleta Natural Resources Restoration Trust Fund

Section 4 of the bill establishes the Isleta Natural Resources Restoration Trust Fund (the “Fund”); specifies that \$32,838,759 from the permanent judgement appropriation is to be transferred to the Fund after execution of final judgement; and authorizes appropriations through the Department of the Interior, a total of \$7,200,000 of which is to be transferred to the Fund. Section 4 specifies the distribution of amounts from the Restoration Fund, the maintenance and investment of the Restoration Fund, and prohibits per-capital payments.

Section 5. Ratification of settlement, dismissal of litigation, and compensation to Pueblo

Section 5 includes the ratification of the Settlement Agreement; provides that the Pueblo and the United States shall execute and file a joint stipulation for dismissal; and specifies that after enactment of the final judgement a total amount of \$32,838,750 shall be paid from the permanent judgement, appropriations and be transferred to the Fund.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office cost estimate for S. 3684 is set forth below:

S. 3648—Pueblo of Isleta Settlement and Natural Resources Restoration Act of 2006

Summary: S. 3648 would establish a trust fund within the U.S. Treasury for the benefit of the Pueblo of Isleta Tribe as part of a settlement of certain claims against the United States under current law. CBO estimates that enacting S. 3648 would have no net effect on direct spending during the 2007–2016 period. In addition, CBO estimates that implementing S. 3648 would result in discretionary outlays of \$7 million in 2007, assuming appropriation of the necessary amounts. Enacting the bill would not affect revenues.

S. 3648 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would benefit the Pueblo of Isleta.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 3648 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

	By fiscal year, in millions of dollars—				
	2007	2008	2009	2010	2011
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Authorization Level	7	0	0	0	0
Estimated Outlays	7	0	0	0	0

Basis of Estimate: CBO estimates that enacting S. 3648 would have no net effect on direct spending in 2007 and would increase discretionary outlays by \$7 million in that same year. For this estimate, CBO assumes that S. 3648 will be enacted in fiscal year 2007 and that the authorized amount will be appropriated in that year.

In June 2006, the Pueblo of Isleta Indian Tribe reached an agreement with the Departments of Justice and the Interior to settle claims filed in the U.S. Court of Federal Claims, alleging damages related to the loss and mismanagement of land by the federal government. S. 3648 would codify this agreement.

S. 3648 would establish the Pueblo of Isleta Natural Resources Restoration Fund (Restoration Fund) within the U.S. Treasury. Within 90 days of enactment of S. 3648, both parties would agree upon a final judgment to be filed in court; at that point, approximately \$33 million would be transferred into the fund from the federal government's permanent appropriations for settlements and judgments (known as the Judgment Fund). The tribe would be authorized to withdraw part or all of the balance of the new Restoration Fund at any time with approval of the Secretary of the Interior. Consistent with the treatment of similar tribal trust funds, CBO estimates that the fund would be considered the Pueblo's property when the fund is established, and subsequent withdrawals would have no effect on the budget.

The federal budget excludes trust funds that are held and managed in a fiduciary capacity by the federal government on behalf of Indian tribes. Thus, the transfer of \$33 million to the Restoration Fund would be considered direct spending for a transfer of funds to a nonfederal entity. However, CBO expects that cost would be equivalent to the likely payment to tribal members in the absence this legislation. In other words, CBO expects that the tribe would receive about \$33 million in 2007 either under current law or under S. 3648.

Under terms of the settlement agreement, if legislation similar to S. 3648 is not enacted by the final adjournment of the 109th Congress, the tribe will have the option of receiving an equivalent sum of money (as would be transferred to the Restoration Fund under S. 3648), or continuing litigation. Information from tribal leadership suggests that the tribe would likely choose to accept the settlement. As such, CBO estimates a current federal expenditure from the Judgment Fund of \$33 million in 2007. S. 3648 would eliminate this future obligation. Thus, CBO estimates that enacting S. 3648 would have no net effect on direct spending.

S. 3648 also would authorize the appropriation of approximately \$7 million to be transferred to the Restoration Fund for activities agreed to by the tribe and the federal government. CBO estimates that these activities would increase discretionary outlays by \$7 million in 2007, assuming the appropriation of the necessary amounts.

Intergovernmental and private-sector impact: S. 3648 contains no intergovernmental or private-sector mandates as defined in UMRA. Enacting the bill would benefit the Pueblo of Isleta because it is a necessary step toward implementing the settlement agreement between the Pueblo and the United States. Any costs of duties that the bill might impose on the Pueblo would be those it has assumed voluntarily as a party to the agreement. The legislation would impose no other significant costs on any state, local, or tribal government.

Estimate prepared by: Federal Costs: Daniel Hoople. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Amy Petz.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that the regulatory and paperwork impacts of S. 3648 should be de minimis.

EXECUTIVE COMMUNICATIONS

The Committee has received no official executive communications on S. 3648.

CHANGES IN EXISTING LAW

S. 3648 will not make changes to existing law.

